

newly added independent claims 72, 75 and 77 to originally filed claim 42 Applicant points out that each claim calls for forming an aluminum plug fill "by a CVD process at a pressure of 1.1 atmospheres." At least as to those claims, Applicant is unable to see that the new claims are drawn to an "invention independent from the invention originally claimed".

The Office Action also states that claims 59, 72 and 75 - 78 are directed "to the patentably distinct embodiment represented by Figure 4." Applicant traverses the assertion that the fact that the listed claims may be read on Figure 4 of the patent specification somehow makes them "patentably distinct" from other claims in the application.

Finally, Applicant notes that Rule 145 applies where the newly added claims are drawn to an invention "distinct from and independent of (emphasis added)" the invention previously claimed. In the present Office Action, the contention that the allegedly newly claimed invention is "independent or distinct from (emphasis added)" the originally claimed invention does not literally meet the clear prerequisite to application of Rule 145.

Reconsideration and withdrawal of the non-final restriction requirement (stated for the first time in the Office Action of October 8) is respectfully requested.

Applicant is aware that no search or action on the merits has yet been given on claims 59, 72 and 75 - 78 and requests that one now be given on those claims, in view of the filing of the Request for Continuing Examination filed herewith. Since Applicant is now entitled to a new examination on the merits by the filing of the RCE, Applicant respectfully traverses the requirement for restriction stated in the October 8 Office Action while provisionally electing to proceed with examination of claims 59, 72 and 75 - 99.

Applicant authorizes the Examiner to cancel claims 42 -43 and 73 - 74 only upon entry of the provisional election of claims 59, 72, and 75-99.

*§102 Rejection of the Claims*

Claims 42-43 and 73-74 were rejected under 35 U.S.C. § 102(a, b, or e) as being anticipated by Admitted prior art.

In view of the position taken above on the Restriction Requirement and Applicants intention to provisionally elect the claims other than 42 - 43 and 73 - 74, the stated rejection of

those claims is believed to be moot.

Notwithstanding the mootness of the rejection in view of the provisional election, Applicant points out that the so-called Admitted Prior Art nether shows nor suggests that the aluminum plug fill "relatively free of voids" called for in claim 42, for example, is in the so called Admitted Prior Art.

Reconsideration and withdrawal of the above rejection is respectfully requested.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612-373-6970) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date

January 8, 2013

By

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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Box RCE, Commissioner of Patents, Washington, D.C. 20231, on this 8<sup>th</sup> day of January, 2003.

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